

# SENATE BILL REPORT

## SB 5034

---

---

As Reported By Senate Committee On:  
Water, Energy & Telecommunications, January 19, 2007

**Title:** An act relating to phasing out the use of polybrominated diphenyl ethers.

**Brief Description:** Phasing out the use of polybrominated diphenyl ethers.

**Sponsors:** Senators Regala, Eide, Swecker, Weinstein, Franklin, Rasmussen, Brandland, Spanel, Jacobsen, McAuliffe, Oemig, Poulsen, Keiser, Shin, Pridemore, Fraser, Fairley, Rockefeller, Kline, Kohl-Welles, Tom and Murray; by request of Department of Ecology.

**Brief History:**

**Committee Activity:** Water, Energy & Telecommunications: 1/10/07, 1/19/07 [DPS, DNP].

---

### SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5034 be substituted therefor, and the substitute bill do pass.

Signed by Senators Poulsen, Chair; Fraser, Marr, Oemig, Pridemore and Regala.

**Minority Report:** Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin, Holmquist and Morton.

**Staff:** Jan Odano (786-7486)

**Background:** Polybrominated diphenyl ethers (PBDEs) are a class of flame retardants. The various commercial grades of PBDEs have been used in a wide variety of products, including carpet pads, mattresses, furniture, and plastic casings for televisions and computers. PBDEs are a source of concern because of their potential for causing adverse public health and environmental effects.

In January 2004, then Governor Gary Locke directed the Department of Ecology (DOE), in consultation with the Department of Health (DOH), to investigate and recommend options to reduce the threat of PBDEs to public health and the environment.

In January 2006, the agencies issued a PBDE Chemical Action Plan recommending that the Legislature ban two forms of PBDEs known as pentabromo diphenyl ether (penta) and octabromo diphenyl ether (octa). U.S. manufacturers of penta and octa voluntarily ceased producing the chemicals in December 2004, and the production of penta and octa has ended in most international markets as well.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

DOE and DOH further recommended banning decabromo diphenyl ether (deca), provided that safer and effective alternatives are identified. Deca is used in textile coatings and plastic casings for televisions, computers, stereos, and other electronics.

**Summary of Bill:** The bill as referred to committee was not considered.

**SUMMARY OF RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Water, Energy & Telecommunications):** Products Prohibited: After January 1, 2008, no person may manufacture, knowingly sell, distribute for sale or use in Washington, products containing PBDEs. This prohibition does not apply to:

- edible products;
- products containing deca except for mattresses (effective January 1, 2008) and residential upholstered furniture, televisions or computers with electronic enclosures containing commercial deca (effective January 1, 2011);
- Federal Aviation Administration safety requirements;
- used or new vehicle parts manufactured before January 1, 2008, containing PBDEs;
- new and used equipment containing PBDEs used primarily for military or federally funded space program applications;
- medical devices;
- new products containing recycled or used materials containing deca;
- new carpet cushion made from recycled foam containing less than one-tenth of one percent penta; and
- individuals or nonprofit organizations selling used products containing PBDEs.

Determining Alternatives: By December 15, 2008, DOE and DOH must review risk assessments, scientific studies, and other relevant findings regarding alternatives to the use of deca in residential upholstered furniture, televisions, and computers. If the departments find safer and technically feasible alternatives, DOE must convene a fire safety committee to determine if the alternatives meet applicable fire safety standards.

If the fire safety committee determines that an identified alternative meets fire safety standards, then after January 1, 2011, no person may manufacture, knowingly sell, distribute for sale or use in Washington, residential upholstered furniture containing deca or any television or computer that has an electronic enclosure containing deca.

If the agencies can not identify safer and technically feasible alternatives or if the fire safety committee determines that no alternative meets fire safety standards, the ban does not take effect. Then, DOE must grant an exemption. DOE and DOH must evaluate exemptions annually. When an alternative to deca becomes available, DOE must convene a fire safety committee to determine if the alternative meets applicable fire safety standards. If the fire safety committee makes such a finding, the agencies must report the findings to the Legislature by December 15 of the year in which the finding is made. DOE must then rescind the exemption granted.

For products containing deca not addressed in this chapter, DOE and DOH must review risk assessments, scientific studies, and other relevant findings regarding alternatives. If the departments find safer and technically feasible alternatives, DOE must convene a fire safety committee to determine if the alternatives meet applicable fire safety standards. DOE must

report to the Legislature on its findings by December 15 of the year in which the finding is made.

DOE must assist state agencies to give priority and preference to purchasing equipment, supplies and other products that do not contain PBDEs.

Fire Safety Committee: The Fire Safety Committee consists of five members appointed by the Governor from the Office of Fire Protection, Washington Fire Chiefs, Washington Fire Commissioners Association, the State Council of Firefighters, and the Washington State Firefighters Association.

Manufacturer Requirements: Manufacturers must notify persons selling these products, recall products and reimburse retailers or other purchasers. Manufacturers, importers, or distributors are not prohibited from transporting products containing PBDEs through Washington or storing them for later distribution outside the state.

Retailer Requirements: Retailers who unknowingly sell banned products with PBDEs are not liable under this chapter. Retailers who have products with PBDEs on the date the restrictions become effective may exhaust their existing supply through sales to the public. DOE must assist in-state retailers in identifying potential products containing PBDEs.

Penalties: Manufacturers violating prohibitions are subject to civil penalties of up to \$1,000 for the first offense and up to \$5,000 for subsequent offenses. Prior to imposing penalties against manufacturers, DOE must offer information to assist manufacturers in identifying prohibited products and complying with this chapter, request certificates of compliance, and issue warning letters.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: PBDEs are persistent, bioaccumulative, and toxic. Penta and octa are banned in eight states and the European Union. PBDEs are found in the environment, animals and people and the levels are increasing. The levels of PBDEs found in the United States are 10 times higher than levels found in people in Japan and Europe. Deca in its original form isn't as toxic as penta or octa, but it breaks down in various environmental conditions into the more toxic forms. Children are the most vulnerable and the most exposed. An adequate margin of safety needs to be maintained, to act as a buffer to make sure action is taken before health effects are seen. Timing is critical to banning PBDEs, if action is taken too early, alternatives may be chosen that are not safer or businesses may not be ready to make necessary changes. If action is taken too late, there is risk of more exposure, health effects and damage to the environment. It is not a choice between health and fire safety; it is about finding a safe and effective alternative.

CON: Deca is not a highly toxic chemical, it has relatively low toxicity. Deca is relatively safe. The European risk assessment has taken 10 years and evaluated deca and determined there is no need for further reduction measures. Deca doesn't present a risk hazard to human

health. The risk of alternatives to replace deca has not been identified, and modeling of some alternatives show a high degree of bioaccumulativity. The breakdown of deca in various environmental conditions is still being investigated. Deca should not be banned unless safer alternatives are found and toxicological data show there is an unacceptable risk to human health. The removal of penta and octa has addressed environmental concerns. The conditions to breakdown deca are not relevant to how deca gets into the environment. Manufacturers will choose alternatives perceived as being green whether or not that has been determined. Escape times from fires have decreased, which presents a greater risk to firefighters. The bill provides a pre-emptive ban on deca that establishes a gap in fire safety protection.

**Persons Testifying:** PRO: Senator Regala, prime sponsor; Rob Duff, Department of Health, Ted Sturdevant, Department of Ecology, Anne Criss, Puget Sound Action Team, Dr. Barry Lawson, Washington Chapter of American Academy of Pediatrics; Karen Bowman, RN, Washington State Association of Nurses; Mike Brown, Washington Association of Fire Chiefs; Cliff Traisman, Washington Conservation Voters/Washington Environmental Council; Nick Federici, Washington Toxics Coalition; Steve Robinson, NW Indian Fisheries Commission; Naki Stevens, People for Puget Sound; Bill LaBorde, WashPIRG.

CON: Ryan Spiller, Washington Fire Commissioners; Grant Nelson, Association of Washington Business; Glade Squires, National Fallen Firefighters Foundation; Laura Ruiz, American Fire Safety Council; Jorge Chavez; William Archer, M.D.; Brad Tower, Tower Ltd.; Ray Dawson, Ph.D., Bromine Science and Environmental Forum; Susan Landry, Albemarle Corporation.

Signed in, Unable to Testify & Submitted Written Testimony: PRO: Ruth Shearer, Ph.D., Healthy Olympia Task Force and Senior Lobby.